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## FISCAL IMPACT REPORT

SPONSOR:     Martinez                          DATE TYPED:     2/17/03        HB     612    

SHORT TITLE:     Notary Public Act                          SB                     

ANALYST:     Chavez    

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Minimal		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Attorney General’s Office (AG)  
LFC Files

### SUMMARY

#### Synopsis of Bill

House Bill 612 repeals the current law governing notary publics and enacts in its place the “Notary Public Act”.

#### Significant Issues

*The following is a synopsis of the Act:*

#### **Section 1**

Gives the short title of the act.

#### **Section 2**

Defines terms relevant to the Notary Public Act.

#### **Section 3**

Lists the qualifications that a notary public must possess and disqualifies a person who has pled guilty or nolo contendere to a felony in addition to a person who has had their notary public commission revoked in the past five years.

**Section 4**

Lists the information necessary for an application of appointment. Changes the current bond to the state from two sureties in the amount of \$500 to a bond in the amount of \$10,000 executed by a licensed surety and limits the bond's term to that of the notary's commission. In addition the applicant fee is increased from \$10.00 to \$20.00.

**Section 5**

Details the appointment term. This section requires the secretary of state to issue a certificate of appointment rather than the current commission and restricts this certificate to the person appointed.

**Section 6**

Does not change the existing law regarding reappointment.

**Section 7**

Describes the duties the notary public is empowered to perform; details prohibited acts; describes when a notary public may certify the affixation of a signature by mark and describes a situation when a notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization.

**Section 8**

Prohibits a notary from refusing to perform a notarial act for certain persons, and permits a notary to refuse to perform a notarial act in certain circumstances.

**Section 9**

Relates to the duties of the surety. States that the bond's term is limited to that of the notary's commission with payment of bond funds to any person conditioned upon the notary public's misconduct. Requires the surety for a notary public to report all claims against the bond to the secretary of state. Requires the governor to suspend the notary's commission if the bond has been exhausted until a new bond in the amount of \$10,000 is obtained and the notary public's fitness to serve is determined by the governor.

**Section 10**

Prohibits a notary from influencing a person to execute a certificate.

**Section 11**

Details penalties for false or incomplete certificate. This section increases the fine for false acts from \$200 to \$1000 and increases the term of imprisonment for such from 3 months to 6 months.

**Section 12**

Describes improper documents.

**Section 13**

Prohibits the intent to deceive.

**Section 14**

Prohibits testimonials.

**Section 15**

Describes in detail actions constituting the unauthorized practice of law.

**Section 16**

Increases the current fees and adds allowable fees for notarial acts.

**Section 17**

Describes how a notary affixes her official signature to documents.

**Section 18**

Restricts the use of a notary's seal and stamp and requires its destruction within a reasonable period under certain circumstances.

**Section 19**

Requires the notary public to upon the performance of any notarial act endorse the date of the expiration of the commission.

**Section 20**

Relates to a notary public's change of name. Now requires the notary public to notify the secretary of state within ten days of such change as opposed to promptly notifying the secretary of state. Also requires the application to contain an impression or image of the new seal or stamp bearing the new name of the notary public. In addition it also requires the notary public to notify the surety in writing within ten days.

**Section 21**

Relates to a notary public's change of address. Now requires the notary public to notify the secretary of state and the surety within ten days of a change as opposed to previously being required to promptly notify the secretary of state.

**Section 22**

Relates to certification and provides that upon request, the secretary of state shall certify to a notary public's commission.

**Section 23**

Describes how a notary resigns her commission.

**Section 24**

Describes how a former notary public must dispose of her seal and stamp.

**Section 25**

Increases the fine for acts by a disqualified notary from \$100 to \$500.

**Section 26**

Provides that an investigation into a notary's conduct may be conducted by the governor or any law enforcement agency even if a notary has resigned or her commission has expired, and permits the governor to issue a written warning to cease misconduct to any notary whose actions are judged to be official misconduct.

**Section 27**

Repeals Section 14-12-1 through 14-12-20 NMSA 1978.

**Section 28**

Provides the effective date of the provisions of the act to be July 1, 2003.

**FISCAL IMPLICATIONS**

Additional revenue to the secretary of state will be realized as the application fee for notary publics is increased from \$10 to \$20.

**ADMINISTRATIVE IMPLICATIONS**

The administrative implications to the secretary of state's office will be minimal.

**TECHNICAL ISSUES**

The Attorney General's Office indicates that although found in the current statute at Section 14-12-13 (B), Section 26, subsection C of House Bill 612 provides that the notary is entitled to notice, hearing, adjudication and appeal before she is removed from office. However, this does not identify the person before whom such a hearing is held or to whom an appeal may be made.

**FC/yr**